IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 138 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ALEMBIC GLASS INDUSTRIES LTD

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 138 of 1996
MR RAKESH GUPTA with MR UDAY JOSHI for
M/S TRIVEDI & GUPTA for Petitioners
MR DN PATEL for Respondent No. 1
NOTICE SERVED for Respondent No. 2-3

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE KUNDAN SINGH

Date of decision: 19/06/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

1. After considerable arguments in this matter, the learned counsel for the petitioners states that the petitioners would like to approach the appellate authority under Section 35 of the Central Excise & Salt Act, 1944, against the impugned order dated 1.1.96, passed by the Assistant Commissioner, Central Excise & Customs, Division III, Vadodara, at Annexure:K to the petition. It is submitted that the petition was filed on 8th January, 1992 and the impugned order has been stayed initially by virtue of the statement recorded in the order dated 9.1.96 and thereafter by virtue of the interim relief granted in terms of para 9(C) on 26.2.96, when rule was issued on the petition. Therefore, the impugned order has remained inoperative all throughout from 9.1.96 and the period of limitation contemplated in Section 35 of the Act had ceased to run in respect of the impugned order from the date on which it was stayed. The learned counsel, therefore, submits that the petitioners would prefer an appeal under Section 35 of the Act, within three weeks from today, and, therefore, seek permission to withdraw this petition. The permission is granted.

2. If the appeal is preferred, as stated by the learned counsel for the petitioners before the appellate authority, the appellate authority shall consider the same on merits and without raising the question of limitation since the impugned order dated 1.1.96 has not operated during the pendency of this petition by virtue of the orders made in this petition from 9.1.96 till now. The learned counsel for the petitioners states that the petitioners will also apply for interim stay/waiver of the pre-deposit of the impugned order before the appellate authority in the appeal that the petitioners would file and submits that the coercive recovery pursuant to the impugned order may not be made until such application is decided by the Commissioner. Since the impugned order has remained inoperative by virtue of the interim stay during the pendency of this petition, it would be appropriate that no recovery should be effected pursuant to the impugned order until the appellate authority takes a decision on the application that may be made by the petitioners in the appeal. The petition stands withdrawn and rule is discharged with no order as to costs. Interim relief stands vacated, subject to the above observations.

[R.K. ABICHANDANI, J.]

[KUNDAN SINGH, J.]

parmar*